

PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District Massachusetts
Name Michael DeNicotlis	Prisoner No.	2004 SEP 22 P Case No. 12

Place of Confinement
MCI Norfolk
P.O. Box 43
Norfolk, Massachusetts 02056
Name of Petitioner (include name under which convicted)
Michael DeNicotlis

Name of Respondent (authorized person having custody of petitioner)
Kathleen M. Dennehy

V.

U.S. DISTRICT COURT
DISTRICT OF MASS.
RECEIVED
MAGISTRATE JUDGE
04-12047 RGS

The Attorney General of the State of: Massachusetts

PETITION

1. Name and location of court which entered the judgment of conviction under attack _____

Essex Superior Court, Salem Massachusetts

2. Date of judgment of conviction July 25, 1987

3. Length of sentence Life without the possibility of parole

4. Nature of offense involved (all counts) _____

two counts of first degree murder, armed robbery and armed assault in a dwelling

5. What was your plea? (Check one)

- (a) Not guilty x
 (b) Guilty
 (c) Nolo contendere

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

6. If you pleaded not guilty, what kind of trial did you have? (Check one)

- (a) Jury x
 (b) Judge only

RECEIPT # 58865

AMOUNT \$ 500

SUMMONS ISSUED 11/14

LOCAL RULE 4.1

WAIVER FORM

MCF ISSUED

BY DPTY. CLK

DATE

11/23/04

7. Did you testify at the trial?

Yes No x

8. Did you appeal from the judgment of conviction?

Yes x No

9. If you did appeal, answer the following:

(a) Name of court Supreme Judicial Court, Massachusetts

(b) Result Judgement affirmed

(c) Date of result and citation, if known Commonwealth v. Daye 411 Mass. 719 (1992)

(d) Grounds raised Violation of defendant's Sixth and Fourteenth Amendments to the United States Constitution

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

(1) Name of court _____

(2) Result _____

(3) Date of result and citation, if known _____

(4) Grounds raised _____

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

(1) Name of court Federal District Court for the District of Massachusetts

(2) Result Judgement Affirmed

(3) Date of result and citation, if known Costa et al. v. DuBois 92-10931-32 WD April 7, 1993

(4) Grounds raised Violations of the defendants' process rights and rights to a fair trial pursuant to the Sixth and Fourteenth Amendments to the United States Constitution

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes No

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court Essex Superior Court

(2) Nature of proceeding Motion for a New Trial

(3) Grounds raised Violation of the defendants' state and federal rights to due process and a fair trial pursuant to the Sixth and Fourteenth Amendments to the United States Constitution

withheld exculpatory evidence,

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

(5) Result Motion denied

(6) Date of March 1989

(b) As to any second petition, application or motion give the same information:

(1) Name of Essex Superior Court

(2) Name of Second Motion for a New Trial

(3) Grounds raised Violations of the defendants state and federal rights to due process and a fair trial pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, Brady Issues, Newly Discovered evidence

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

(5) Result Motion denied

(6) Date of result October 12, 1994**** Third Motion for a New Trial filed Aug 24, 2001, Motion denied

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes No

(2) Second petition, etc. Yes No

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

***Third Motion for a New Trial Gatekeeper Petition to Supreme Judicial Court denied September 19, 2003.

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant. (See attached facts)

The State Court's denial of the defendant's third motion for a new trial and the Supreme Judicial Courts's denial of the defendant's request to appeal violated the defendants right to a fair trial and due process pursuant to the Sixth and Fourteenth Amendments to the United States Constitution where the prosecution suppressed exculpatory evidence which would have cast real doubt on the

A. Ground one: justice of his conviction, including seven thousand additional documents relating to the first seventeen months of the Paglia murder investigation before Daye was implicated; withholding original fingerprint cards of two named other suspects where the state had previously maintained that the fingerprint cars were not available, but were obtained by the defendant's pursuant to the freedom of information request; withholding ballistics and documentary evidence that a named other suspect, Barone was arrested with a gun matching the gun that was used to kill the victims within days of the crime. These reports were later turned over the defendants pursuant to a freedom of information request and were located in the state prosecutor's file.

Supporting FACTS (state *briefly* without citing cases or law): _____

see attached

B. Ground two: In denying the defendant's third Motion for a New Trial and denying the defendant an opportunity to appeal the trial court's decision the State Court violated the defendants rights to due process and a fair trial pursuant to the Sixth and Fourteenth Amendments to the United States Constitution where the state did not disclose a \$ 10,000.00 payment to its lone identification witness despite the defendants specific request for such information, and the trial courts order requiring the state to turn over the evidence.

Supporting FACTS (state *briefly* without citing cases or law): _____

see attached _____

(5)

The state Court in denying the defendants Motion for a New Trial and his gatekeeper petition to appeal such a denial violated the defendants rights to due process and a fair trial pursuant to the Sixth and Fourteenth Amendments to the United State Constitution where state denied the defendant's request for documents the state claimed in response to a freedom of information request were in the state prosecutor's file including documents relating to the first seventeen months of the investigation before the defendant became a suspect as well as copies of the fingerprints found at the scene because the state court held the defendant was free to pay for the copies, despite his inability to pay and the fact that he has been serving a life sentence since 1987.

C. Ground three:

Supporting FACTS (state *briefly* without citing cases or law):

D. Ground four:

Supporting FACTS (state *briefly* without citing cases or law):

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
Yes No

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Bernard Grossberg, 99 Summer Street Boston Massachusetts

(b) At arraignment and plea Bernard Grossberg, 99 Summer Street Boston Massachusetts

(6)

(c) At trial Bernard Grossberg 99 Summer Street, Boston, Massachusetts(d) At sentencing Bernard Grossberg, 99 Summer Street, Boston Massachusetts(e) On appeal Leonard Mancuso, 152 Lynnway, Lynn, Massachusetts(f) In any post-conviction proceeding Earle C. Cooley 21 Custom House, Boston Massachusetts 02110(g) On appeal from any adverse ruling in a post-conviction proceeding Earle C. Cooley
21 Custom House
Boston Massachusetts 02110

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes No

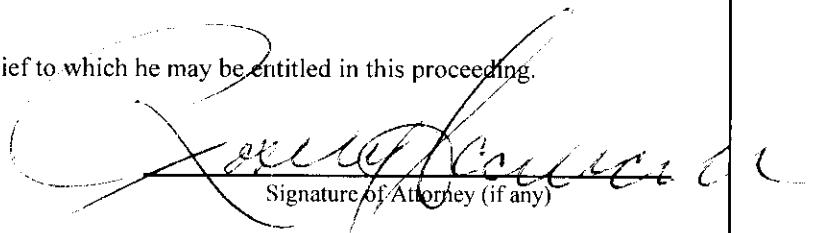
(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

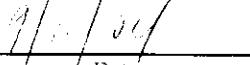
(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes No

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.


Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on


Date
Signature of Petitioner